

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

DALE MAISANO,

Plaintiff,

v.

CORIZON HEALTH INC., et al.,

Defendants.

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Case No. 3:13-cv-0697

Judge Campbell

ORDER

The Court entered an order on July 19, 2013 denying plaintiff Dale Maisano's application to proceed *in forma pauperis* and giving the plaintiff 30 days within which to submit the \$400 filing fee. The plaintiff has now filed an Emergency Notice of Appeal to the Sixth Circuit Court of Appeals (ECF No. 6).

In light of this filing, the Court presumes that Maisano does not intend to submit the district court's filing fee. This action is therefore **DISMISSED** for failure to comply with Court order, and the Clerk is **DIRECTED** to enter judgment in accordance with Rule 58 of the Federal Rules of Civil Procedure.

The Notice of Appeal was filed prematurely but, pursuant to Rule 4(a)(2) of the Federal Rules of Appellate Procedure, will be treated as filed the same date judgment is entered in accordance with this Order.

The Notice of Appeal was not accompanied by the \$455 filing fee or an application to pursue the appeal as a pauper. Even if the plaintiff had submitted such an application, the Court would not have entertained it favorably. As set forth in the order denying the motion to file this case *in forma pauperis*, the plaintiff is subject to the three-strikes prohibition in 28 U.S.C. § 1915(g). In addition, the Court **CERTIFIES** that the appeal is frivolous and is not taken in good faith.

Pursuant to Rule 24(a)(5), Fed. R. App. P., the plaintiff may nonetheless file, within **30 days** after service of this order, a motion with the Sixth Circuit Court of Appeals for leave to proceed as a pauper on appeal. *Owens v. Keeling*, 461 F.3d 763, 775 (6th Cir. 2006); *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999). The plaintiff's motion must include a copy of the motion and affidavit he previously filed in this court as well as this court's statement of the reasons for denying pauper status on appeal. Fed. R. App. P. 24(a)(5).

The plaintiff is notified that if he does not file a motion in the Sixth Circuit Court of Appeals within 30

days of receiving notice of this order and subsequently obtain leave to proceed as a pauper from that court, or if he fails to pay the required appellate filing fee of \$455.00 within this same time period, the appeal may be dismissed for want of prosecution. *Callihan*, 178 F.3d at 804.

The Clerk of Court is **DIRECTED** to forward a copy of this Order to the Sixth Circuit Court of Appeals.

It is so **ORDERED**.



Todd Campbell
United States District Judge